



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1304

RIN 0970-AC85

Flexibility for Head Start Designation Renewals in Certain Emergencies

AGENCY: Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This rule adopts as final the provision to the Head Start Program Performance Standards (HSPPS) to establish parameters by which ACF may make designation renewal determinations during a federally declared major disaster, emergency, or public health emergency (PHE) and in the absence of all normally required data.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the interim final rule published December 7, 2020, at 85 FR 78792, is adopted as final.

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Office of Head Start, at HeadStart@eclkc.info or 1-866-763-6481. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

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I. Statutory Authority

ACF publishes this final rule under the authority granted to the Secretary of Health and Human Services (the Secretary) by sections 641(a), which describes the Secretary's authority to designate a local public or private nonprofit agency as a Head Start agency; 641(c), which lays out the requirements for the system for designation renewal; and 644(c), which directs the Secretary to prescribe rules or regulations for Head Start agencies, of the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110-134).

II. Executive Summary

The Improving Head Start for School Readiness Act of 2007 (the 2007 Reauthorization) of the Head Start Act (the Act) required ACF to establish a system for determining whether Head Start (including Early Head Start) grantees are delivering high-quality and comprehensive services to the children and families they serve. In 2011, ACF issued a regulation (76 FR 70009) to establish the Designation Renewal System (DRS) to meet this requirement. Under the DRS, all Head Start grants were transitioned from indefinite to 5-year grant periods, and any grant that meets one or more of seven specified conditions during the 5-year project period is subject to an

open competition for continued funding. Any Head Start grant that does not meet one of the seven DRS conditions becomes eligible for a new noncompetitive 5-year grant. The Act lays out the types of data that must be considered as part of these DRS determinations. Three of the seven conditions of the DRS were revised through a final rule published on August 28, 2020 (85 FR 53189). Due to the ongoing 2019 Novel Coronavirus (COVID-19) pandemic, the ability of ACF to collect all data on grants required for making determinations under the DRS has been severely impaired. This issue is described further in the following paragraph. Furthermore, there may be major disasters, emergencies, or PHEs in the future that similarly impact ACF's ability to collect all information required for making DRS determinations.

Therefore, ACF adopts as final the interim rule, published December 7, 2020, at 85 FR 78792 that added a new section to the HSPPS regulation under Part 1304 Subpart B, Designation Renewal. This section, § 1304.17, established parameters by which ACF may make a designation renewal determination when certain federally declared emergencies prevent collection of all normally required data. As with COVID-19, a major disaster or emergency declared by the President under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 and 5191) or another PHE declared by the Secretary under section 319 of the Public Health Service Act (42 U.S.C. 247d) may necessitate extended, unanticipated program closures or temporary shifts to different program models or service delivery mechanisms, which can make certain monitoring or data collection activities unsafe, impossible, and/or invalid. In these situations, ACF may lack certain required data to make designation renewal determinations. In cases where a grantee's 5-year grant is ending and all required data are not available due to the impacts of a federally declared disaster or emergency, § 1304.17 allows ACF to still determine if an open competition is required, or if the grant may be renewed noncompetitively based on the conditions for which ACF has data. Without § 1304.17, ACF would not be able to make DRS determinations, which could result in the loss of critical Head Start services in impacted communities.

In response to the ongoing COVID-19 PHE, ACF has established through the interim final rule a process by which ACF will meet the requirements of the Act to make designation renewal determinations while ensuring the safety of Head Start program staff, children, and families. As Head Start grants approach the end of their 5-year grant periods during the ongoing COVID-19 pandemic, ACF must make a determination under the DRS for these grantees to either receive a new 5-year grant noncompetitively or to require an open competition. Extended program closures for in-person Head Start services due to the PHE have made, and continue to make, it impossible for ACF to collect certain data elements relevant to the seven DRS conditions and required as part of designation renewal determinations. In the absence of a DRS determination, these communities could be left without any Head Start services during a particularly challenging time for the children and families Head Start programs serve. To ensure children and families do not lose access to Head Start services during a federally declared disaster or emergency, now and in the future, this final rule is needed to establish the process by which DRS determinations will be made under these circumstances.

Ensuring the health and safety of Head Start staff, children, and families is of utmost importance. This final rule directly supports that goal, while finalizing a process for ACF to meet the requirements of the Act to make designation renewal determinations during the COVID-19 pandemic and certain other federally declared disasters or emergencies. Due to the ongoing PHE, ACF found good cause to waive notice and comment rulemaking and instead publish an IFR effective upon publication. It would have been contrary to the public interest to delay the flexibility to make DRS determinations with the data available and to ensure the continuity of critical Head Start services in impacted communities. This final rule considers and responds to public comments received on the IFR.

III. Background

Since its inception in 1965, Head Start has been a leader in helping children from low-income families reach kindergarten more prepared to succeed in school. Through the 2007

Reauthorization, Congress required HHS to ensure these children receive the highest quality services possible. In support of that requirement, the 2007 Reauthorization directed the Secretary to establish the DRS to (1) identify Head Start grantees delivering a high-quality and comprehensive Head Start program that could receive funding noncompetitively for a 5-year period, and grantees not delivering a high-quality and comprehensive Head Start program that will be required to compete for continued funding, and (2) transition all grants from indefinite grants to 5-year grant periods. Congress required that decisions about which grantees would have to compete be based on budget and fiscal management data (including annual audits), program monitoring reviews, classroom quality—and in particular teacher-child interactions—as measured by a valid and reliable research-based observational instrument, and other program information.

In 2011, HHS published a final rule to establish the DRS that included seven conditions. Grants that met one or more of the seven conditions would have their funding subject to an open competition for the next 5-year grant period. Grantees that did not meet a condition became eligible to receive a new noncompetitive 5-year grant. Following the transition of all grants from indefinite to 5-year project periods and considering available data and research, a 2020 final rule¹ revised the DRS and made changes to three of the seven DRS conditions. Effective November 9, 2020, Head Start grants that meet one or more of the following seven conditions under the DRS are subject to an open competition: (1) two or more deficiencies under section 641A(c)(1)(A), (C), or (D) of the Act; (2) failure to establish, use, and analyze children’s progress on agency-established school readiness goals; (3) scores below competitive thresholds in any of the three domains of the Classroom Assessment Scoring System: Pre-K (CLASS); (4) revocation of a license to operate a center or program; (5) suspension from the program; (6) debarment from receiving federal or state funds or disqualification from the Child and Adult Care Food Program

¹ <https://www.federalregister.gov/documents/2020/08/28/2020-17746/head-start-designation-renewal-system>.

(CACFP); and/or (7) either an audit finding of being at risk for failing to continue as a “going concern,” or two or more audit findings of material weakness or questioned costs associated with its Head Start funds in audit reports submitted to the Federal Audit Clearinghouse (in accordance with section 647 of the Act) for a financial period within the current project period.

The notice and comment process for the 2020 final rule predated the COVID-19 pandemic. In the 2019 notice of proposed rulemaking on the DRS, HHS did not propose any flexibilities within the DRS to make designation renewal determinations in the absence of certain data related to the seven conditions due to a federally declared major disaster, emergency, or PHE. Therefore, these flexibilities could not be included in the DRS final rule that was published on August 28, 2020.

IV. Provisions of the Final Rule

All Head Start grants now operate on a 5-year project period. As a cohort of Head Start grants conclude their 5-year grant period, ACF must make a determination whether grants may be renewed noncompetitively or if they will be subject to an open competition. The Act requires ACF to consider a number of factors in making a designation renewal determination. As described previously, a federally declared major disaster or emergency or PHE can make it unsafe or impossible to collect some of these required data on grants. In particular with the COVID-19 pandemic, ACF has been, and continues to be, unable to collect data from a valid, reliable, research-based, observational measure of classroom quality as required by the Act. The reasons for this are further elaborated in the following paragraph. It is possible that future disasters or emergencies could also preclude ACF from collecting other required data elements necessary for DRS determinations.

ACF meets the requirement in the Act to use a valid, reliable, research-based, observational measure of classroom quality as part of DRS determinations through the administration of the CLASS. The CLASS measures the quality of teacher-child interactions on a 7-point scale in three areas or domains: Emotional Support, Classroom Organization, and

Instructional Support. As part of the established ACF monitoring process for Head Start grantees, trained reviewers administer the CLASS on-site in a sample of Head Start classrooms for each grant. The scores for each classroom within a grant are then averaged to create grant-level scores. If a grant receives an average CLASS score below the following competitive thresholds for any of the three CLASS domains, the grant is designated for competition under the DRS: a 5 for Emotional Support, 5 for Classroom Organization, and 2.3 for Instructional Support.² Each year, ACF schedules a subset of Head Start grantees for CLASS reviews, depending on where in the 5-year project period each grant is. The completion of these CLASS reviews within a certain window of time is critical to ensure ACF can complete the necessary subsequent steps for each grant, to determine and notify the grantee of their status as either competitive or noncompetitive under the DRS with sufficient time prior to the end of their current 5-year project period to run the necessary competitive processes.

In March 2020, ACF made the decision to temporarily suspend the administration of CLASS reviews in Head Start classrooms due to the COVID-19 PHE. At that time, ACF was concerned about jeopardizing the health and safety of Head Start children and staff by sending outside observers into Head Start classrooms to conduct CLASS reviews. Most Head Start classrooms across the country closed for some time due to increased health and safety concerns amid the spread of COVID-19. More than 90 percent of programs closed in spring 2020. Due to the evolving nature of the COVID-19 pandemic, ACF was uncertain about the ability to resume CLASS reviews during the 2020-2021 program year. Therefore, in an information memorandum directed to Head Start and Early Head Start grantees published on September 24, 2020, ACF announced the decision to suspend all CLASS reviews for the 2020-2021 program year.³

² As promulgated in the DRS final rule published on August 28, 2020, the competitive threshold for the instructional support domain is 2.3 for CLASS reviews conducted up through July 31, 2025, and then this threshold increases to 2.5 for CLASS reviews conducted on or after August 1, 2025.

³ <https://eclkc.ohs.acf.hhs.gov/policy/im/acf-im-hs-20-05>.

There are multiple factors that informed this decision. First, as the impacts of the COVID-19 pandemic vary significantly in different parts of the country, Head Start programs must make locally determined decisions regarding whether they can safely operate in-person services for children and families. Programs that do not operate in-person services for a period of time are, instead, providing some type of remote or virtual services for enrolled children and families. The CLASS tool was not originally designed to conduct observations of virtual interactions between teachers and children, and the research on such use of the tool is very limited. Therefore, if a program is closed for in-person services for an extended period due to the pandemic, and even if the program is providing virtual services, ACF cannot conduct CLASS reviews of virtual teaching for monitoring and oversight purposes with those programs.

Second, as previously mentioned, for Head Start programs that are providing in-person services to children and families during part or all of the 2020-2021 program year, ACF is not able to send additional outside individuals into classrooms to conduct CLASS observations without increasing the risk of exposing Head Start children and staff to the virus. This is consistent with best practice guidance from the Centers for Disease Control and Prevention on safely providing child care in group settings during the COVID-19 pandemic.⁴

Finally, due to the fact that some programs are operating virtual services for part or all of their enrollment, and this has fluctuated throughout the program year, there remains a lot of uncertainty for ACF around the availability of a sufficient sample size for CLASS observations for any given grantee.

While ACF strongly believes it is still important to promote high-quality learning environments for all children served in Head Start, the health and safety of children and staff during this PHE are also paramount considerations for ACF. Therefore, ACF has made the determination that a valid and reliable observational instrument that assesses classroom quality

⁴ https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html#open_

as required by the Act does not exist during the current PHE, so ACF cannot fulfill this requirement during this time. This final rule provides ACF the flexibility to proceed with DRS determinations in the absence of CLASS data that is the result of the ongoing PHE. This final rule also provides this flexibility for a federally declared major disaster, emergency, or PHE in the future, which could also impact the administration of CLASS or the collection of other data elements necessary for making DRS determinations. The flexibility will allow ACF to ensure the continuity of critical Head Start services for the nation's most vulnerable children and families. As stated previously, ensuring high-quality classroom learning environments for enrolled children is still an important priority for ACF. ACF offers a wealth of training and technical assistance (TTA) resources to promote quality improvement in classroom learning environments and teacher-child interactions, including materials on the Early Childhood Learning Knowledge Center website, interactive webinars and learning modules, and online opportunities for grantees to share and learn about best practices with other grantees. ACF also funds a regional TTA system, which includes individualized support from regional specialists for grantees on an as-needed basis and at the discretion of each ACF region.

In summary, the provision established in § 1304.17 allows ACF to make designation renewal decisions with the data available when the determination must be made in order to ensure the continuity of Head Start services, even if certain federally declared emergencies or disasters preclude ACF from collecting all of the data required in the Head Start Act. This flexibility ensures the safety of Head Start staff, children, and families and the continuity of Head Start services.

V. Public Comments Analysis

We received five (5) unique comments on the IFR. Commenters included four individuals and one for-profit organization that developed, published, and owns the copyright to the CLASS instrument. Given the very small number of comments received on the IFR and no

comments recommending changes to the specific provisions, this final rule retains the exact regulatory language from the IFR.

Comment: Four commenters expressed support for the continuation of education services during a PHE or disaster such as the COVID-19 pandemic, and a few specifically supported the flexibility provided to the Head Start program as described in the IFR.

Response: OHS appreciates these comments and agrees with the commenters regarding the importance of continuing Head Start services during a disaster or PHE. We did not make any changes to the final rule in response to these comments.

Comment: One commenter was supportive of the flexibility provided to the Head Start program in the IFR and agreed with our assessment that the CLASS tool was not designed to assess virtual interactions between teachers and children. However, the commenter suggested CLASS reviews can be conducted remotely for classrooms operating in-person, but noted that research to examine virtual applications of CLASS is ongoing to ensure valid and reliable scores from such observations. The commenter also noted that there is no relationship between the number of children in a classroom and ratings on the CLASS instrument, so scores during the COVID-19 pandemic would not be expected to be systematically different from scores at other times when program learning environments are more typical in structure and delivery. The commenter also pointed out that some states are continuing to require CLASS reviews as part of state oversight and accountability efforts during the pandemic. The commenter encouraged OHS to resume CLASS observations as soon as it is possible to do so safely, even if just in a professional development capacity, to support teachers and children as they return for in-person learning.

Response: OHS appreciates the commenter's thoughtful analysis of the application of the CLASS tool during a disaster or PHE, including promising possibilities as well as limitations of the tool. OHS appreciates the commenter's point that the number of children in a classroom at any given time does not impact the validity or reliability of scores from CLASS observations.

OHS will remove that piece of the rationale for suspension of CLASS reviews described in the preamble of this final rule. However, as described in the IFR, a more salient reason for our decision to suspend CLASS reviews was because individual Head Start classrooms have had to transition from in-person to virtual services—and vice versa—at various points throughout the program year, in order to respond to the changing nature of the pandemic as well as guidance from federal, state, and local officials on best practices for delivery of education services during this time. OHS monitoring requires a certain number of classrooms within a program be part of the observations. OHS uses a documented and rigorous methodology to randomly select which classrooms within a program are part of these observations for monitoring purposes. As noted in the IFR, in many cases a sufficient sample size of a grantee’s classrooms operating in-person services at any given time may not have been possible to obtain during the 2020-2021 program year.

Finally, OHS appreciates the comments regarding resumption of CLASS reviews and potential unintended consequences around alignment with state requirements related to CLASS. OHS will carefully consider these points when determining the best time for resuming CLASS reviews of Head Start programs. The continued health and safety of Head Start staff, children, and families continues to be of paramount concern to OHS. This comment did not recommend any changes to the provision, and we did not make any changes to the final rule in response to this comment.

VI. Regulatory Process Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act) requires federal agencies to determine, to the extent feasible, a rule’s impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term “small entities,” as defined in the RFA, comprises small businesses, not-for-

profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Under this definition, some Head Start grantees may be small entities. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. However, the Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96-354), that this rule will not have a significant impact on a substantial number of small entities. During a major disaster or emergency or PHE—such as COVID-19—in which ACF is not able to collect all data elements required for DRS determinations and must exercise the flexibility set forth in § 1304.17 of the HSPPS, ACF expects there to be fewer grantees in competition for the relevant competition cycles. Therefore, ACF does not expect there to be a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA; see 2 U.S.C. 1501 et seq.) was enacted to avoid imposing unfunded federal mandates on state, local, and tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2021, that threshold is approximately \$158 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, in excess of the threshold.

Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF believes it is not necessary to prepare a family policymaking

assessment (see Pub. L. 105–277) because the action it takes in this final rule will not have any impact on the autonomy or integrity of the family as an institution.

Federalism Assessment Executive Order 13132

Executive Order 13132 requires federal agencies to consult with state and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rule will not have substantial direct impact on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Congressional Review

The Congressional Review Act (CRA) allows Congress to review major rules issued by federal agencies before the rules take effect (see 5 U.S.C. 802(a)). The CRA defines a “major rule” as one that has resulted, or is likely to result, in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers; individual industries; federal, state, or local government agencies; or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (see 5 U.S.C. Chapter 8). Based on our estimates of the impact of this rule, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has designated this rule as ‘not major’ under the CRA.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (Pub. L. 104-13) seeks to minimize government-imposed burden from information collections on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

The Paperwork Reduction Act defines “information” as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). This includes requests for information to be sent to the government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)). This action does not include any new information collection requirements or changes to existing information collection requirements.

Regulatory Planning and Review Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as established in, Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the

budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year), and an "economically significant" regulatory action is subject to review by the Office of Management and Budget. ACF does not anticipate that this rulemaking is likely to have an impact of \$100 million or more in any one year, and therefore this rule does not meet the definition of "economically significant" under Executive Order 12866. Executive Order 12866 provides that OIRA will review all significant rules. OIRA has determined that this final rule is significant and was accordingly reviewed by OMB.

VII. Regulatory Impact Analysis

Need for Regulatory Action

This regulatory action is necessary to provide ACF the flexibility to make determinations under the Head Start DRS, even in the absence of all required data, if this lack of data is due to a major disaster or emergency or PHE. The ongoing PHE due to COVID-19 has prevented ACF from conducting onsite observations of grantees with the CLASS tool (an observational measure of the quality teacher-child interactions in the classroom), which is required by regulation. Data from these observations provide one piece of information for determining whether a Head Start grant can be renewed noncompetitively or must compete with other potential applicants for continued funding. Several grants (60) whose 5-year project periods are ending in fiscal year (FY) 2022 would typically have their CLASS reviews completed by ACF as part of the federal monitoring process sometime during FY 2020 or FY 2021.

However, due to the PHE, ACF has not conducted CLASS reviews since March 2020 and has decided not to conduct any future CLASS reviews until at least the fall of 2021. So these 60 grants whose 5-year project periods are nearing completion do not yet have CLASS data as part of federal monitoring. Without this regulatory action, CLASS reviews for these 60 grants would

have to be conducted in the fall of 2021, and several other decisions must be made by ACF after the CLASS reviews are completed but before funding can be renewed either competitively or noncompetitively. Therefore, having to conduct CLASS reviews for these grants so late in their project periods creates a strong risk of the project periods expiring before ACF can complete the grant renewal process for these 60 grants. This puts the Head Start services for enrolled children and families at great risk in the impacted service areas.

Cost Savings Analysis

There are approximately 2,200 grants in Head Start. Absent this final rule, it is estimated that 60 grants (or 3 percent) of all Head Start grants will require CLASS reviews to be conducted in FY 2022 for renewal determinations that must also be made in FY 2022. CLASS reviews would need to be conducted to acquire the necessary data to make renewal determinations as described in the Head Start Act and the HSPPS. Typically, CLASS reviews cost about \$8,500 per grant to the federal government. This primarily includes the cost of travel, lodging, and wages for CLASS reviewers. The total baseline cost of the 60 CLASS reviews in FY 2022 is estimated at \$510,000.

Across all Head Start grants, ACF estimates that approximately 13 percent of grants meet the CLASS condition of the DRS and are, therefore, required to compete for continued funding. If ACF applies this percentage to the 60 grants lacking CLASS data due to the COVID-19 pandemic, this results in an estimate of approximately 8 of these 60 grants that would be required to compete for continued funding due to low CLASS scores if they did have CLASS data available.

The cost for competition associated with completing a competitive application is estimated at \$3,097 per applicant. This assumption includes 60 hours per competitive application at a cost of approximately \$51.62 per hour in staff time (ACF multiplies an hourly wage of approximately \$25.81 by two to account for fringe benefits). Applications would likely be completed by a combination of the Head Start assistant director and other managers in an

early childhood program (i.e., child development manager or family and community partnership manager). The average hourly wage for these positions is based on the U.S. Bureau of Labor Statistics Job Code 11-9031. ACF multiplies \$3,097 per applicant by 16 to account for the eight incumbent grantees applying for funds as well as eight nonincumbent applicants for those service areas. This results in a baseline estimated cost of \$49,552 for these eight grantees to complete competitive applications in FY 2022 if they did in fact have to compete, as well as eight additional applicants. The total baseline cost for conducting CLASS reviews for these 60 grants and for competition associated with eight of these 60 grants is \$559,552. With this final rule, these baseline costs would not apply and are therefore cost savings in this analysis.

With this final rule, those eight grantees that would have been required to compete in FY 2022 would instead need to complete an annual grant application for a new annual award. ACF assumes it takes approximately 33 hours of staff time to complete a noncompetitive application. Using the same assumptions as above for hourly wage, ACF estimates it costs approximately \$1,703 per grant to complete a noncompetitive application. ACF multiplies this by eight grants, which results in a total cost of approximately \$13,624 for these grantees to complete a noncompetitive continuation application in FY 2022. Taking this cost into account, the total cost savings associated with this final rule is approximately \$545,928. This includes cost savings to those entities that are not existing Head Start grantees as there would be no funding opportunity to which they would submit a competitive application.

A qualitative opportunity cost for this new rule is fewer opportunities for entities that are not existing Head Start grantees to be able to compete and potentially grow as an early childhood provider in their community, for the eight communities where grants were not designated for competition due to potentially low CLASS scores. There is also the qualitative cost of children continuing to be served by grantees who may be providing lower-quality classroom learning environments that would have led to competition. However, ACF believes there is an added benefit of existing grantees still receiving DRS determinations in a timely manner and not

experiencing undue stress around the status of their grant, particularly in the midst of COVID-19, when continuity of Head Start services for children and families is critically important. Additionally, these grantees would be able to continue to access and receive support from OHS through OHS's extensive TTA system, to facilitate continued quality improvement in classroom quality care and service provision for children and families.

ACF does not believe there will be a significant economic impact from this regulatory action since the flexibility in this final rule will only be exercised when necessary. A federally declared major disaster, emergency, or PHE that limits the ability of ACF to collect all data necessary to assess programs for DRS determinations, such as the COVID-19 PHE, are rare and, therefore, ACF anticipates this flexibility will rarely be exercised. ACF also anticipates that this flexibility will be exercised in the future during more localized disasters that affect a very small subset of grantees.

This RIA analyzes a 1-year time horizon covering FY 2022. In the coming years, ACF anticipates very few grants being impacted by the provision in this final rule. However, ACF also recognizes it is difficult to predict future potential emergencies or disasters during which ACF may need to again exercise the flexibility laid out in this regulatory provision, resulting in uncertainty around potential costs and cost savings.

VIII. Tribal Consultation Statement

ACF conducts an average of five tribal consultations each year for those tribes operating Head Start and Early Head Start. The consultations are held in four geographic areas across the country: Southwest, Northwest, Midwest (Northern and Southern), and Eastern. The consultations are often held in conjunction with other tribal meetings or conferences, to ensure the opportunity for most of the 150 tribes that operate Head Start and Early Head Start programs to be able to attend and voice their concerns about issues regarding service delivery. ACF completes a report after each consultation and then compiles a final report that summarizes the consultations and submits the report to the Secretary at the end of the year.

List of Subjects in 45 CFR Part 1304

Designation Renewal System, Classroom Assessment Scoring System (CLASS), COVID-19, Education of disadvantaged, Grant programs—social programs, Head Start, Monitoring.

Therefore, for the reasons discussed in the preamble, ACF adopts as final the interim rule that amended 45 CFR part 1304 on December 7, 2020 at 85 FR 78792.

Dated: September 2, 2021

JooYeun Chang,
Acting Assistant Secretary
for Children and Families.

Xavier Becerra,
Secretary.

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